

Donald Phillips

From: Donald Phillips
Sent: Friday, October 25, 2019 9:14 AM
To: Peter Romary
Cc: Donald Phillips
Subject: REVISED: New Petition and Response to Public Records Request
Attachments: Interim ECU Chancellor Dan Gerlach Investigation--PRLR for Custodial LEA Recording(s)

RESPONSE TO PUBLIC RECORDS REQUEST

Peter:

I am not sure when City Attorney's Office will be making the calls. We have a lot of matters going on. Unfortunately, I will only be able to provide you the one (1) DVD upon receipt of the entered Consent Order and payment to the City of Greenville of \$5.00.

On behalf of the City and in response to your below public records request, please find attached the email I sent to Mr. Henriques and Mr. Gray on Monday, October 14, 2019. The City hereby considers your public records request concluded.

Thank you.
Donald

Donald K. Phillips
Assistant City Attorney
P.O. Box 7207
Greenville, NC 27835-7207
Tel: (252) 329-4426
Fax: (252) 329-4626
Email: dkphillips@greenvillenc.gov
Website: www.greenvillenc.gov



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From: Peter Romary <peter.romary@qverity.com>
Sent: Thursday, October 24, 2019 7:55 PM
To: Donald Phillips <DKPhillips@greenvillenc.gov>
Subject: Re: REVISED: New Petition, Attachment A, and proposed Consent Order

Many thanks, Donald.

Would it be possible to let them know when I pick up the DVDs pursuant to the order, because at that point I will know that we had no last minute hiccups and also you can inform them, without any objections from me,

that (if I can get the 5 copies -- I'll pay the \$25) a copy is either being sent / or is being given to the UNC Board of Governors (so that way they are fully apprised of where this went).

I also wondered (not just because it is a public record) if I could get a copy of the emails you sent to Mark and Ken Gray last week so that my clients can understand more fully why the courtesy calls were made to them, as they had made inquiries about the videos -- I doubt they will have any objections, nor should they as I know I would be very grateful for that courtesy.

I hope to be there at or around 10:30-10:45 and look forward to meeting you.

One final thing (again apologies) -- I know some folks don't have DVD players on their computers -- if I leave a flash drive there with your folks while over at the courthouse filing (it may have some other docs on) but do you think someone could also download onto there? It also makes it easier for me to make a copy onto my external HD which I use to back up.

Thanks again for all your help with this.

Very best wishes,

Peter

On Thu, Oct 24, 2019 at 5:43 PM Donald Phillips <DKPhillips@greenvillenc.gov> wrote:

Peter:

Based upon our conversation a few moments ago, please find attached the revised Petition, Attachment A, and proposed Consent Order for your final approval.

As stated, I will be contacting Mark P. Henriques, Esq. of Womble Bond Dickinson (US) LLP (Attorneys for UNC System) and S. McKinley Gray, III, Esq. of Ward and Smith, P.A. (Attorneys for Dan Gerlach) tomorrow letting them know that this is being filed. City Attorney's Office will also be giving a courtesy call to ECU's General Counsel.

Thank you.

Donald

Donald K. Phillips

Assistant City Attorney

P.O. Box 7207

Greenville, NC 27835-7207

Tel: (252) 329-4426

Fax: (252) 329-4626

Email: dkphillips@greenvillenc.gov

Website: www.greenvillenc.gov



From: Donald Phillips

Sent: Thursday, October 24, 2019 2:19 PM

To: Peter Romary <peter.romary@qverity.com>

Cc: Donald Phillips <DKPhillips@greenvillenc.gov>

Subject: New Petition and Appendix

Peter:

Please find attached your original proposed Petition and Appendix A and a revised Petition and Attachment A. I have also attached a proposed Consent Order for your consideration and review. What is the legal entity name of your "Fraternal Order of Police" client? I guessed that it is the one listed, but was not sure.

Please give me a call at your convenience to let me know your thoughts.

Thank you.

Donald

Donald K. Phillips

Assistant City Attorney

P.O. Box 7207

Greenville, NC 27835-7207

Tel: (252) 329-4426

Fax: (252) 329-4626

Email: dkphillips@greenvillenc.gov

Website: www.greenvillenc.gov



From: Peter Romary <peter.romary@qverity.com>

Sent: Wednesday, October 23, 2019 5:50 PM

To: Donald Phillips <DKPhillips@greenvillenc.gov>

Subject: New Petition and Appendix

Many thanks for your assistance, Don!

Please see attached -- if you can let me know the the best day for you, as I say, I can be there this Friday or next Monday or Tuesday.

You have been very kind and helpful with all of this and I am extremely grateful to you for all you have done for me and for my clients (which group seems to be growing by the minute) -- I look forward to going back to working with Hedge Funds as well as screening and recommending people for Judicial appointments (Federal and State -- especially if we do grow the number of Special Superior Court Judges for NC then I will have much more work in screening and selecting)

Very best wishes,

Peter

--

Peter Romary

Partner and General Counsel, QVerity

Managing Partner, QVerity Legal

This e-mail is for the intended recipient only.

If you have received it by mistake please let us know by reply and then delete it from your system; access, disclosure, copying, distribution or reliance on any of it by anyone else is prohibited.

If you as intended recipient have received this e-mail incorrectly, please notify the sender (via e-mail) immediately.

--

Peter Romary

Partner and General Counsel, QVerity

Managing Partner, QVerity Legal

Donald Phillips

From: Donald Phillips
Sent: Monday, October 14, 2019 6:04 PM
To: mark.henriques@wbd-us.com; smg@wardandsmith.com
Cc: Donald Phillips
Subject: Interim ECU Chancellor Dan Gerlach Investigation--PRLR for Custodial LEA Recording(s)
Attachments: N.C.G.S. 132-1.4A.PDF; NCGS 132-1 4A - Request for Disclosure of Recording.pdf; AOC-CV-270 (04.2017).pdf

PUBLIC RECORDS REQUEST FOR CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING

Name of Requestor: Mark P. Henriques, Esq.
Womble Bond Dickinson (US) LLP
Attorneys for UNC System

S. McKinley Gray, III, Esq.
Ward and Smith, P.A.
Attorneys for Dan Gerlach

Date of Request: 10/14/2019
Date of Incident: 09/25/2019
GPD Officer(s): None
GPD File No.: None

Mr. Henriques and Mr. Gray:

I understand that you are interested in viewing City of Greenville, Greenville Police Department ("GPD") traffic/public safety camera recordings from September 25, 2019 regarding an investigation of Interim ECU Chancellor Dan Gerlach.

Overview of the law regarding law enforcement recordings: Regarding your request to view the recording(s) at issue, please find attached N.C.G.S. § 132-1.4A, which became effective October 1, 2016. In a nutshell, this law creates very specific procedures for a person who is requesting to either **view** (seek "**disclosure**") or obtain a **copy** (seek "**release**") of any custodial law enforcement agency recording (traffic/public safety camera, body worn camera, dashboard camera, or any other audio or video recording). Requests for "disclosure" of GPD recordings are handled by GPD and the Chief of Police allows or denies "disclosure." A recording can only be "released" by superior court order and only after the person seeking "release" has first "filed" a Petition for Release in superior court.

If you want to VIEW the GPD recording(s): I have attached the GPD *Request for Disclosure of Recording Form*. Each of you will need to complete this form to determine your eligibility to view the portions of the requested recordings. Please then contact Lt. Michael Montanye regarding specific questions and scheduling of those recordings that are applicable to your request for disclosure. Here is Lt. Montanye's contact information:

Lieutenant Michael Montanye
Strategic Services
Greenville Police Department
Email: mmontanye@greenvillenc.gov

Telephone: (252) 329-4835

If you want to RECEIVE A COPY of the GPD recording(s): For your convenience, I have attached the *Petition for Release of Custodial Law Enforcement Agency Recording Form* (AOC-CV-270). Please complete this form and file this form with the Pitt County Clerk of Superior Court. You will also need to calendar the matter for hearing with the Clerk of Superior Court and the Superior Court Trial Court Coordinator. You will need to properly give notice to all parties as required by the statute. As the attorney that will be handling the matter for the City, I would respectfully request to be copied as well on all documents you file. **If you decide to file a Petition, please give me a call before you file the Petition so that we can discuss the filing and logistics in greater detail.**

Please note that I am out of town at a CLE, but will be back in the office on Thursday. Feel free to call me if you have any questions or would like to discuss. My direct line is (252) 329-4331. If you need to reach me before Thursday, please call my cell (252) 916-9803.

Thank you.

Donald

Donald K. Phillips

Assistant City Attorney

P.O. Box 7207

Greenville, NC 27835-7207

Tel: (252) 329-4426

Fax: (252) 329-4626

Email: dkphillips@greenvillenc.gov

Website: www.greenvillenc.gov



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§ 132-1.4A. Law enforcement agency recordings.

(a) Definitions. – The following definitions apply in this section:

- (1) Body-worn camera. – An operational video or digital camera or other electronic device, including a microphone or other mechanism for allowing audio capture, affixed to the uniform or person of law enforcement agency personnel and positioned in a way that allows the camera or device to capture interactions the law enforcement agency personnel has with others.
- (2) Custodial law enforcement agency. – The law enforcement agency that owns or leases or whose personnel operates the equipment that created the recording at the time the recording was made.
- (3) Dashboard camera. – A device or system installed or used in a law enforcement agency vehicle that electronically records images or audio depicting interaction with others by law enforcement agency personnel. This term does not include body-worn cameras.
- (4) Disclose or disclosure. – To make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the custodial law enforcement agency. This term does not include the release of a recording.
- (5) Personal representative. – A parent, court-appointed guardian, spouse, or attorney of a person whose image or voice is in the recording. If a person whose image or voice is in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney; or the parent or guardian of a surviving minor child of the deceased.
- (6) Recording. – A visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses.
- (7) Release. – To provide a copy of a recording.

(b) Public Record and Personnel Record Classification. – Recordings are not public records as defined by G.S. 132-1. Recordings are not personnel records as defined in Part 7 of Chapter 126 of the General Statutes, G.S. 160A-168, or G.S. 153A-98.

(c) Disclosure; General. – Recordings in the custody of a law enforcement agency shall be disclosed only as provided by this section. A person requesting disclosure of a recording must make a written request to the head of the custodial law enforcement agency that states the date and approximate time of the activity captured in the recording or otherwise identifies the activity with reasonable particularity sufficient to identify the recording to which the request refers.

The head of the custodial law enforcement agency may only disclose a recording to the following:

- (1) A person whose image or voice is in the recording.
- (2) A personal representative of an adult person whose image or voice is in the recording, if the adult person has consented to the disclosure.
- (3) A personal representative of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.

- (4) A personal representative of a deceased person whose image or voice is in the recording.
- (5) A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.

When disclosing the recording, the law enforcement agency shall disclose only those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording.

(d) Disclosure; Factors for Consideration. – Upon receipt of the written request for disclosure, as promptly as possible, the custodial law enforcement agency must either disclose the portion of the recording relevant to the person's request or notify the requestor of the custodial law enforcement agency's decision not to disclose the recording to the requestor.

The custodial law enforcement agency may consider any of the following factors in determining if a recording is disclosed:

- (1) If the person requesting disclosure of the recording is a person authorized to receive disclosure pursuant to subsection (c) of this section.
- (2) If the recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) If disclosure would reveal information regarding a person that is of a highly sensitive personal nature.
- (4) If disclosure may harm the reputation or jeopardize the safety of a person.
- (5) If disclosure would create a serious threat to the fair, impartial, and orderly administration of justice.
- (6) If confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.

(e) Appeal of Disclosure Denial. – If a law enforcement agency denies disclosure pursuant to subsection (d) of this section, or has failed to provide disclosure more than three business days after the request for disclosure, the person seeking disclosure may apply to the superior court in any county where any portion of the recording was made for a review of the denial of disclosure. The court may conduct an in-camera review of the recording. The court may order the disclosure of the recording only if the court finds that the law enforcement agency abused its discretion in denying the request for disclosure. The court may only order disclosure of those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording. An order issued pursuant to this subsection may not order the release of the recording.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency, and (iii) the District Attorney. Actions brought pursuant to this subsection shall be set down for hearing as soon as practicable, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(f) Release of Recordings to Certain Persons; Expedited Process. – Notwithstanding the provisions of subsection (g) of this section, a person authorized to receive disclosure pursuant to subsection (c) of this section, or the custodial law enforcement agency, may petition the superior court in any county where any portion of the recording was made for an order releasing the recording to a person authorized to receive disclosure. There shall be no fee for filing the petition which shall be filed on a form approved by the Administrative Office of the Courts and shall state the date and approximate time of the activity captured in the recording, or otherwise identify the activity with reasonable particularity sufficient to identify the recording. If the petitioner is a person authorized to receive disclosure, notice and an opportunity to be

heard shall be given to the head of the custodial law enforcement agency. Petitions filed pursuant to this subsection shall be set down for hearing as soon as practicable and shall be accorded priority by the court.

The court shall first determine if the person to whom release of the recording is requested is a person authorized to receive disclosure pursuant to subsection (c) of this section. In making this determination, the court may conduct an in-camera review of the recording and may, in its discretion, allow the petitioner to be present to assist in identifying the image or voice in the recording that authorizes disclosure to the person to whom release is requested. If the court determines that the person is not authorized to receive disclosure pursuant to subsection (c) of this section, there shall be no right of appeal and the petitioner may file an action for release pursuant to subsection (g) of this section.

If the court determines that the person to whom release of the recording is requested is a person authorized to receive disclosure pursuant to subsection (c) of this section, the court shall consider the standards set out in subsection (g) of this section and any other standards the court deems relevant in determining whether to order the release of all or a portion of the recording. The court may conduct an in-camera review of the recording. The court shall release only those portions of the recording that are relevant to the person's request and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.

(g) Release of Recordings; General; Court Order Required. – Recordings in the custody of a law enforcement agency shall only be released pursuant to court order. Any custodial law enforcement agency or any person requesting release of a recording may file an action in the superior court in any county where any portion of the recording was made for an order releasing the recording. The request for release must state the date and approximate time of the activity captured in the recording, or otherwise identify the activity with reasonable particularity sufficient to identify the recording to which the action refers. The court may conduct an in-camera review of the recording. In determining whether to order the release of all or a portion of the recording, in addition to any other standards the court deems relevant, the court shall consider the applicability of all of the following standards:

- (1) Release is necessary to advance a compelling public interest.
- (2) The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- (4) Release would reveal information regarding a person that is of a highly sensitive personal nature.
- (5) Release may harm the reputation or jeopardize the safety of a person.
- (6) Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- (7) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- (8) There is good cause shown to release all portions of a recording.

The court shall release only those portions of the recording that are relevant to the person's request, and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency, and (iii) the District Attorney. Actions brought pursuant to

this subsection shall be set down for hearing as soon as practicable, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(h) Release of Recordings; Law Enforcement Purposes. – Notwithstanding the requirements of subsections (c), (f), and (g) of this section, a custodial law enforcement agency shall disclose or release a recording to a district attorney (i) for review of potential criminal charges, (ii) in order to comply with discovery requirements in a criminal prosecution, (iii) for use in criminal proceedings in district court, or (iv) any other law enforcement purpose, and may disclose or release a recording for any of the following purposes:

- (1) For law enforcement training purposes.
- (2) Within the custodial law enforcement agency for any administrative, training, or law enforcement purpose.
- (3) To another law enforcement agency for law enforcement purposes.

(i) Retention of Recordings. – Any recording subject to the provisions of this section shall be retained for at least the period of time required by the applicable records retention and disposition schedule developed by the Department of Natural and Cultural Resources, Division of Archives and Records.

(j) Agency Policy Required. – Each law enforcement agency that uses body-worn cameras or dashboard cameras shall adopt a policy applicable to the use of those cameras.

(k) No civil liability shall arise from compliance with the provisions of this section, provided that the acts or omissions are made in good faith and do not constitute gross negligence, willful or wanton misconduct, or intentional wrongdoing.

(l) Fee for Copies. – A law enforcement agency may charge a fee to offset the cost incurred by it to make a copy of a recording for release. The fee shall not exceed the actual cost of making the copy.

(m) Attorneys' Fees. – The court may not award attorneys' fees to any party in any action brought pursuant to this section. (2016-88, s. 1.)

Physical Address:
500 South Greene Street
Greenville, North Carolina 27834

Mailing Address:
Post Office Box 7207
Greenville, North Carolina 27835-7207



For Internal Use Only:	
Report No.:	

Telephone: (252) 329-4333
Facsimile: (252) 329-4792

Mark R. Holtzman, Chief of Police
mholtzman@greenvillenc.gov

GREENVILLE POLICE DEPARTMENT

Request for Disclosure of Recording Pursuant to N.C.G.S. § 132-1.4A

PLEASE NOTE:

Pursuant to N.C.G.S. § 132-1.4A(a)(4), "disclosure" means to make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the Greenville Police Department, the custodial law enforcement agency. The term "disclosure" does not include the release ("to provide a copy") of a recording.

Person Requesting Disclosure of Recording—Requestor's Information

Name: _____ Home Phone: _____
Date of Birth: _____ Age: _____ Cell Phone: _____
Address: _____ City: _____ State: _____ Zip Code: _____
Email: _____

What is the date, approximate time of the activity captured in the recording? Date: _____ Approximate Time: _____ ☐ a.m. ☐ p.m.

Report, Citation, or Arrest Number (if known): _____

Describe any other information identifying the activity captured in the recording or otherwise describing the event:

Type of Recording (check all that apply): ☐ Body-worn camera ☐ Dashboard camera ☐ Other Recording

PLEASE NOTE:

Recordings are not public records as defined by N.C.G.S. § 132-1 and are not personnel records as defined in Part 7 of Chapter 126 of the General Statutes, N.C.G.S. § 160A-168, or N.C.G.S. § 153A-98. Recordings do not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses. N.C.G.S. §§ 132-1.4A(a)(6) and (b).

As the Requestor, I am (please check all that apply):

- ☐ (1) A person whose image or voice is in the recording.
- ☐ (2) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of an adult person whose image or voice is in the recording, and the adult person has consented to the disclosure.

(A copy of the legal documentation establishing your authority to make this request and written consent must be included with this request.)

Provide below the name, address, and telephone number of the adult person whose image or voice is in the recording:

- ☐ (3) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.
(A copy of the legal documentation establishing your authority to make this request must be included with this request.)

Provide below the name, address, and age of the minor or adult person under lawful guardianship whose image or voice is in the recording:

- ☐ (4) A personal representative (☐ the personal representative of the estate of the deceased person; ☐ the deceased person's surviving spouse, ☐ the deceased person's parent, ☐ the deceased person's adult child; ☐ the deceased person's attorney; or ☐ the parent or ☐ the guardian of a surviving minor child) of a deceased person whose image or voice is in the recording.

(A copy of the legal documentation establishing your authority to make this request must be included with this request.)

Provide below the name, address, and date of death of the deceased person whose image or voice is in the recording:

- ☐ (5) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of an adult person who is incapacitated and unable to provide consent to disclosure.

(A copy of the legal documentation establishing your authority to make this request must be included with this request.)

Provide below the name, address, and current location of the adult person whose image or voice is in the recording and who is alleged to be incapacitated and unable to provide consent (please also specify why you contend the adult person is incapacitated and unable to provide consent to disclosure):

PLEASE NOTE:

Upon receipt of the written request for disclosure, as promptly as possible, the Greenville Police Department must either disclose the portion of the recording relevant to the person's request or notify the requestor of the Greenville Police Department's decision not to disclose the recording to the requestor. N.C.G.S. § 132-1.4A(d). When disclosing the recording, the Greenville Police Department shall disclose only those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to N.C.G.S. § 132-1.4A(c) shall not record or copy the recording. If the Greenville Police Department denies disclosure pursuant to subsection N.C.G.S. § 132-1.4A(d), or has failed to provide disclosure more than three (3) business days after the request for disclosure, the person seeking disclosure may apply to the superior court in any county where any portion of the recording was made for a review of the denial of disclosure.

I have read and understand this document.

Signature: _____ Date of Request: _____

Printed Name: _____

FOR INTERNAL USE ONLY

Received By: _____ Date of Receipt: _____

Time of Receipt: _____ ☐ a.m. ☐ p.m.

NOTES: _____

STATE OF NORTH CAROLINA

File No. _____

In The General Court Of Justice
Superior Court Division

____ County

**IN THE MATTER OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING SOUGHT BY:**

Name Of Petitioner _____

Address _____

City, State, Zip _____

Phone No. _____

Fax No. _____

Email Address _____

**PETITION FOR RELEASE OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING**☐ G.S. 132-1.4A(f) – Person authorized to receive disclosure
(No Filing Fee Applies)☐ G.S. 132-1.4A(g) – General
(CVS Filing Fee Applies)

I, the above-named petitioner, request the release of a custodial law enforcement agency recording to _____,
state that at least some portion of the law enforcement agency recording was made in this county, and I further state the following:

(Include date and approximate time of activity captured in the recording, or otherwise identify the activity with particularity sufficient to identify the recording at issue.)

**CERTIFICATE OF SERVICE
ON HEAD OF CUSTODIAL LAW ENFORCEMENT AGENCY**

I certify that a filed copy of this Petition was served on the head of the custodial law enforcement agency as follows:

☐ Personal Delivery☐ By Regular Mail, US postage prepaid, addressed as follows:**CERTIFICATE OF SERVICE ON DISTRICT ATTORNEY**

I certify that a filed copy of this Petition was served on the District Attorney as follows (only required for general release):

☐ Personal Delivery☐ By Regular Mail, US postage prepaid, addressed as follows:

Date _____

Petitioner's Signature _____

Donald Phillips

From: Antionette Cox
Sent: Friday, October 25, 2019 10:23 AM
To: Donald Phillips
Subject: Petition
Attachments: DOC102519-10252019071738.pdf

Hello!

I was instructed to send this to you by Beardsley. The original is being given to Patina.

Thank you!

Officer A.D. Cox (480)
Field Operations Bureau
C-Platoon/West Zone
Greenville Police Department
500 S. Greene St.
Greenville NC, 27834
Cell (252)702-0455
Work (252)329-3480
Email: acox@greenvillenc.gov

STATE OF NORTH CAROLINA

PITT County

File No.

19 CVS 3050

In The General Court Of Justice
Superior Court Division

2019 OCT 25 A 9:35

PITT CO., C.S.C.

**IN THE MATTER OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING SOUGHT BY:**

Name Of Petitioner

**Police Benevolent Association of North Carolina, Inc. and
North Carolina Fraternal Order of Police**

Address

c/o Peter J. Romary, Esq.
Law Office of Peter Romary
147 Ellsworth Manor Drive

City, State, Zip

Hillsborough, NC 27278

Phone No.

(919) 359-1103

Fax No.

(919) 359-1192

Email Address

peter.romary@qverity.com

**PETITION FOR RELEASE OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING**

- ☐ G.S. 132-1.4A(f) – Person authorized to receive disclosure
(No Filing Fee Applies)
- ☒ G.S. 132-1.4A(g) – General
(CVS Filing Fee Applies)

I, the above-named petitioner, request the release of a custodial law enforcement agency recording to Peter J. Romary, Attorney. State that at least some portion of the law enforcement agency recording was made in this county, and I further state the following: Petitioners request all relevant video/recorded footage from static/pole mounted (traffic/public safety) cameras covering the area of 1) East Fifth Street and Reade Street in Greenville, NC and 2) East Fifth Street and Cotanche Street in Greenville, NC between approximately 9:00 pm on Wednesday, September 25, 2019 and 2:30 am on Thursday, September 26, 2019 showing Mr. Dan Gerlach in this area and otherwise approaching, walking up to, entering a vehicle (believed to be a gold colored Nissan), and then driving away from said location. Petitioners more specific request for release is stated in Attachment A, which is hereby made a part of this Petition.

(Please see Attachment A)

(Include date and approximate time of activity captured in the recording, or otherwise identify the activity with particularity sufficient to identify the recording at issue.)

**CERTIFICATE OF SERVICE
ON HEAD OF CUSTODIAL LAW ENFORCEMENT AGENCY**

I certify that a filed copy of this Petition was served on the head of the custodial law enforcement agency as follows:

- ☒ Personal Delivery
- ☐ By Regular Mail, US postage prepaid, addressed as follows:

Mark R. Holtzman
Chief of Police
Greenville Police Department
500 South Greene Street
Greenville, NC 27834

Note: Also copied Assistant City Attorney Donald K. Phillips by email to: dkphillips@greenvillenc.gov

CERTIFICATE OF SERVICE ON DISTRICT ATTORNEY

I certify that a filed copy of this Petition was served on the District Attorney as follows (only required for general release):

- ☒ Personal Delivery
- ☐ By Regular Mail, US postage prepaid, addressed as follows:

The Honorable Faris C. Dixon
Pitt County District Attorney
Pitt County Courthouse
100 West 3rd Street
Greenville, NC 27858

Date

10-25-19

Petitioner's Signature

Peter J. Romary, Attorney for Petitioners

STATE OF NORTH CAROLINA
COUNTY OF PITT

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 19 CVS _____

IN THE MATTER OF CUSTODIAL)
LAW ENFORCEMENT AGENCY)
RECORDING SOUGHT BY:)
)
POLICE BENEVOLENT ASSOCIATION)
OF NORTH CAROLINA, INC. and)
NORTH CAROLINA FRATERNAL)
ORDER OF POLICE,)
)
Petitioners.)

ATTACHMENT A

As set forth in the Petition to which this Attachment is incorporated by reference, it is requested that the City of Greenville/Greenville Police Department shall release, to Petitioners, by and through their attorney, Peter J. Romary, Esq., any and all footage/recordings from static/pole mounted (traffic/public safety) cameras as set forth below:

1. Footage of the area outside of the area of Sup Dogs (East Fifth Street/Reade Street), Greenville, NC between approximately 9:00 pm to 10:50 pm on Wednesday, September 25, 2019, particularly any footage showing Mr. Dan Gerlach.

2. Footage of the area outside of the area of Club 519 (East Fifth Street/Cotanche Street), Greenville, NC between approximately 10:40 pm on Wednesday, September 25, 2019 to approximately 1:30 am on Thursday, September 26, 2019, particularly any footage showing Mr. Dan Gerlach.

3. Footage showing the area of (East Fifth Street/Cotanche Street), Greenville, NC between approximately 1:40 am to 2:00 am on Thursday, September 26, 2019, particularly any footage showing Mr. Dan Gerlach.

4. Footage showing the area of 212 East Fifth Street (East Fifth Street/Reade Street), Greenville, NC between approximately 2:00 am to 2:30 am on Thursday, September 26, 2019, particularly any footage showing Mr. Dan Gerlach, especially footage of Mr. Dan Gerlach approaching, walking up to, and entering a vehicle (believed to be a Gold colored Nissan) and then driving away from said location.

Donald Phillips

From: CH1COP03 <CH1COP03@greenvillenc.gov>
Sent: Friday, October 25, 2019 10:29 AM
To: Donald Phillips
Subject: Send data from CH1COP03 10/25/2019 10:29
Attachments: DOC102519-10252019102905.pdf

Scanned from CH1COP03
Date:10/25/2019 10:29
Pages:2
Resolution:200x200 DPI

STATE OF NORTH CAROLINA

File No.

19 CVS 3050

PITT

County

In The General Court Of Justice
Superior Court DivisionIN THE MATTER OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING SOUGHT BY:

2019 OCT 25 A 9:35

PITT CO., C.S.C.

Name Of Petitioner

Police Benevolent Association of North Carolina, Inc. and
North Carolina Fraternal Order of Police

Address

c/o Peter J. Romary, Esq.
Law Office of Peter Romary
147 Ellsworth Manor Drive

City, State, Zip

Hillsborough, NC 27278

Phone No.

(919) 359-1103

Fax No.

(919) 359-1192

Email Address

peter.romary@qverity.com

PETITION FOR RELEASE OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING☐ G.S. 132-1.4A(f) – Person authorized to receive disclosure
(No Filing Fee Applies)☒ G.S. 132-1.4A(g) – General
(CVS Filing Fee Applies)

I, the above-named petitioner, request the release of a custodial law enforcement agency recording to Peter J. Romary, Attorney. State that at least some portion of the law enforcement agency recording was made in this county, and I further state the following: Petitioners request all relevant video/recorded footage from static/pole mounted (traffic/public safety) cameras covering the area of 1) East Fifth Street and Reade Street in Greenville, NC and 2) East Fifth Street and Cotanche Street in Greenville, NC between approximately 9:00 pm on Wednesday, September 25, 2019 and 2:30 am on Thursday, September 26, 2019 showing Mr. Dan Gerlach in this area and otherwise approaching, walking up to, entering a vehicle (believed to be a gold colored Nissan), and then driving away from said location. Petitioners more specific request for release is stated in Attachment A, which is hereby made a part of this Petition.

(Please see Attachment A)

(Include date and approximate time of activity captured in the recording, or otherwise identify the activity with particularity sufficient to identify the recording at issue.)

CERTIFICATE OF SERVICE
ON HEAD OF CUSTODIAL LAW ENFORCEMENT AGENCY

I certify that a filed copy of this Petition was served on the head of the custodial law enforcement agency as follows:

☒ Personal Delivery☐ By Regular Mail, US postage prepaid, addressed as follows:Mark R. Holtzman
Chief of Police
Greenville Police Department
500 South Greene Street
Greenville, NC 27834Note: Also copied Assistant City Attorney Donald K. Phillips by email to: dkphillips@greenvillenc.gov

CERTIFICATE OF SERVICE ON DISTRICT ATTORNEY

I certify that a filed copy of this Petition was served on the District Attorney as follows (only required for general release):

☒ Personal Delivery☐ By Regular Mail, US postage prepaid, addressed as follows:The Honorable Faris C. Dixon
Pitt County District Attorney
Pitt County Courthouse
100 West 3rd Street
Greenville, NC 27858

Date

10/25/19

Petitioner's Signature

Peter J. Romary, Attorney for Petitioners

AOC-CV-270, Rev. 4/17

© 2017 Administrative Office of the Courts

STATE OF NORTH CAROLINA

COUNTY OF PITT

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

FILE NO.: 19 CVS 3050

IN THE MATTER OF CUSTODIAL
LAW ENFORCEMENT AGENCY
RECORDING SOUGHT BY:

POLICE BENEVOLENT ASSOCIATION
OF NORTH CAROLINA, INC. and
NORTH CAROLINA FRATERNAL
ORDER OF POLICE,

Petitioners.

ATTACHMENT A

As set forth in the Petition to which this Attachment is incorporated by reference, it is requested that the City of Greenville/Greenville Police Department shall release, to Petitioners, by and through their attorney, Peter J. Romary, Esq., any and all footage/recordings from static/pole mounted (traffic/public safety) cameras as set forth below:

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Donald Phillips

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Attachments: DOC102519-10252019102911.pdf

Scanned from CH1COP03
Date:10/25/2019 10:29
Pages:6
Resolution:200x200 DPI

STATE OF NORTH CAROLINA

COUNTY OF PITT

FILED
2019 OCT 25 A 10:03

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FILE NO.: 19 CVS 3050

IN THE MATTER OF CUSTODIAL, C.S.C.
LAW ENFORCEMENT AGENCY
RECORDING SOUGHT BY:)

POLICE BENEVOLENT ASSOCIATION)
OF NORTH CAROLINA, INC. and)
NORTH CAROLINA FRATERNAL)
ORDER OF POLICE,)
Petitioners.)

CONSENT ORDER
ON PETITION FOR RELEASE OF
CUSTODIAL LAW ENFORCEMENT
AGENCY RECORDING
N.C.G.S. § 132-1.4A(g)

THIS MATTER came on to be heard before the undersigned Superior Court Judge upon the Petition for Release of Custodial Law Enforcement Agency Recording filed on October 25, 2019 by Petitioners, Police Benevolent Association of North Carolina, Inc. and North Carolina Fraternal Order of Police, pursuant to N.C.G.S. § 132-1.4A(g) to determine whether release of law enforcement agency recordings related to this matter is warranted under Chapter 132 of the North Carolina General Statutes.

APPEARANCES

For Petitioners:

Peter J. Romary, Esq.
The Law Office of Peter Romary
147 Ellsworth Manor Drive
Hillsborough, North Carolina 27278
*Attorney for Petitioners,
Police Benevolent Association of North Carolina, Inc. and
North Carolina Fraternal Order of Police*

For Custodial Law
Enforcement Agency and
the Head of the Custodial
Law Enforcement
Agency:

Donald K. Phillips
Assistant City Attorney
City of Greenville
200 West Fifth Street
Post Office Box 7207
Greenville, North Carolina 27835
*Counsel for City of Greenville (Greenville Police Department)
and Designated Representative of Chief of Police Mark R.
Holtzman (Head of Custodial Law Enforcement Agency)*

For Pitt County District
Attorney's Office:

None Appearing

BASED UPON the careful consideration of the arguments presented at the hearing of this matter and the entire record in this proceeding, the undersigned makes the following findings of fact.

FINDINGS OF FACT

1. The Petitioners in this matter are Police Benevolent Association of North Carolina, Inc. and North Carolina Fraternal Order of Police ("Petitioners"). On October 25, 2019, on behalf of Petitioners, Petitioners' attorney, Peter J. Romary, Esq. of The Law Office of Peter Romary ("Mr. Romary"), filed a Petition for Release of Custodial Law Enforcement Agency Recording pursuant to N.C.G.S. § 132-1.4A(g) on a form approved by the Administrative Office of the Courts (AOC-CV-270) (the "Petition").

2. The City of Greenville (the "City"), is a municipal corporation organized and existing under the laws of the State of North Carolina.

3. Pursuant to Chapter 160A of the North Carolina General Statutes, the City has established, organized, and maintained an accredited law enforcement agency, the Greenville Police Department ("GPD"), with territorial jurisdiction and all law enforcement powers as authorized by statute, case law, and the common law of the State of North Carolina within the corporate limits of the City.

4. Petitioners seek footage from certain traffic/public safety cameras which are unrelated to any pending GPD criminal investigation.

5. The City and GPD consider Petitioners' Petition to be a request for traffic/public safety cameras recordings, as defined by N.C.G.S. § 132-1.4A(a)(6), which are not public record pursuant to N.C.G.S. § 132-1.4(c) and N.C.G.S. § 132-1.4A(b), and of which GPD owns or leases or whose personnel operates the equipment that created the recordings at the time the recordings were made.

6. GPD is the custodial law enforcement agency at issue in this matter as defined by N.C.G.S. § 132-1.4A(a)(2).

7. On or about October 25, 2019, in accordance with N.C.G.S. § 132-1.4A(g), Petitioners served a copy of the Petition upon Mark R. Holtzman, GPD Chief of Police, the head of the custodial law enforcement agency ("Chief Holtzman"), and upon the Honorable Faris C. Dixon, District Attorney for Prosecutorial District 3A, Pitt County ("District Attorney Dixon").

8. On or about October 25, 2019, the Petitioners also served a courtesy copy of same to Donald K. Phillips, Assistant City Attorney and the attorney for the City and GPD ("Mr. Phillips").

9. In accordance with N.C.G.S. § 132-1.4A(g), Chief Holtzman ("the head of the custodial law enforcement agency") was notified of the Petition and has been given an opportunity

to be heard, by and through his designated representative, Mr. Phillips ("and those persons, or their designated representative," have been "given an opportunity to be heard").

10. In accordance with N.C.G.S. § 132-1.4A(g), the City is unaware of any law enforcement agency personnel whose image or voice are in any of the recordings at issue. Accordingly, there are no law enforcement agency personnel subject to being notified and given an opportunity to be heard in this matter.

11. Each person entitled to be notified of this proceeding, was given an opportunity to be heard, either individually or by such person's designated representative.

12. GPD has custody of the following seven (7) recordings, as defined by N.C.G.S. § 132-1.4A(a)(6), involving and/or related to Petitioners' request and that are the subject of the Petition at issue:

GPD Recording				
No.	GPD File Name	Date	Type	Time
1.	TFC_GPD_5thReade_PTZ_R2 UPT_GPD_5thReade_Quad1_NE_R6a UPT_GPD_5thReade_Quad1_W_R6a	09/25/2019	Traffic/Public Safety Camera	9:20 pm-10:45 pm 9:20 pm-9:30 pm 9:20 pm-9:30 pm
2.	UPT_GPD_5thCotanche_Quad5_N_R6a UPT_GPD_5thCotanche_Quad5_E_R6a UPT_GPD_5thCotanche_Quad5_W_R6a	09/25/2019	Traffic/Public Safety Camera	10:41 pm-10:43 pm 10:41 pm-10:43 pm 10:41 pm-10:43 pm
3.	UPT_GPD_5thCotanche_Quad1_SE_R6a UPT_GPD_5thCotanche_Quad4_N_R6a UPT_GPD_5thCotanche_Quad4_S_R6a	09/25/2019	Traffic/Public Safety Camera	10:42 pm-10:46 pm 10:42 pm-10:46 pm 10:42 pm-10:46 pm
4.	UPT_GPD_5thCotanche_Quad4_SW_R6a UPT_GPD_5thCotanche_Quad4_W_R6a UPT_GPD_5thCotanche_Quad4_N_R6a UPT_GPD_5thCotanche_Quad4_S_R6a	09/26/2019	Traffic/Public Safety Camera	1:15 am-1:21am 1:15 am-1:21am 1:15 am-1:21am 1:15 am-1:21am
5.	UPT_GPD_5thCotanche_Quad1_S_R6a UPT_GPD_5thCotanche_Quad1_SE_R6a	09/26/2019	Traffic/Public Safety Camera	1:15 am-1:21am 1:15 am-1:21am
6.	UPT_GPD_5thCotanche_S_R2	09/26/2019	Traffic/Public Safety Camera	1:16am-1:17 and 1:47 am-1:56 am
7.	TFC_GPD_5thReade_PTZ_R2 TFC_GPD_5thReade_W_R2 UPT_GPD_5thReade_Quad1_NE_R6a UPT_GPD_5thReade_Quad1_W_R6a	09/26/2019	Traffic/Public Safety Camera	2:10 am-2:13 am

13. Herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 are City traffic/public safety camera "recordings," as defined by N.C.G.S. § 132-1.4A(a)(6)("[a] visual, audio, or visual and audio recording captured by . . . any other video or audio recording device . . ."). The parties agree and stipulate to the release of GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 in its entirety to Petitioners and Mr. Romary. The parties further agree and stipulate that GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 in their entirety as herein defined are relevant to Petitioners' and Mr. Romary's request and are subject to release to Petitioners as defined by N.C.G.S. § 132-1.4A(a)(7) as further ordered herein.

14. All recordings at issue in this matter were made entirely in Pitt County, North Carolina.

15. The Court did not conduct an in-camera review of any recordings at issue in this case.

BASED UPON the foregoing findings of fact, the undersigned makes the following conclusions of law.

CONCLUSIONS OF LAW

1. The filing of this Petition is made in accordance with N.C.G.S. § 132-1.4A(g).

2. Each person entitled to be notified of the proceeding was given an opportunity to be heard, either individually or by such person's designated representative.

3. To the extent that same exists, Petitioners have stated the date and approximate time of the activity captured in the recordings sought or have otherwise identified the activity with reasonable particularity sufficient to identify the recordings.

4. The Court has jurisdiction over the parties and the subject matter herein.

5. The Court has carefully reviewed N.C.G.S. § 132-1.4A in its entirety.

6. A "recording" is defined in N.C.G.S. § 132-1.4A(a)(6) as:

[a] visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses.

7. "Release," as defined by N.C.G.S. § 132-1.4A(a)(7), means "[t]o provide a copy of a recording."

8. All of the recordings at issue (GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7) are records of criminal investigations and/or records of criminal intelligence information pursuant to N.C.G.S. § 132-1.4. Additionally, all recordings at issue are not public records pursuant to N.C.G.S. § 132-1.4(a) and N.C.G.S. § 132-1.4A(b). Accordingly, the recordings at issue contain information that is otherwise exempt from disclosure or release under North Carolina law.

9. Pursuant to N.C.G.S. § 132-1.4A(g), Petitioners and Mr. Romary seek release of all of the herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7.

10. N.C.G.S. § 132-1.4A(g) states in pertinent part:

In determining whether to order the release of all or a portion of the recording, in addition to any other standards the court deems relevant, the court shall consider the applicability of all of the following standards:

- (1) Release is necessary to advance a compelling public interest.
- (2) The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- (4) Release would reveal information regarding a person that is of a highly sensitive personal nature.
- (5) Release may harm the reputation or jeopardize the safety of a person.
- (6) Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- (7) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- (8) There is good cause shown to release all portions of a recording.

11. The Court has considered the standards set out in N.C.G.S. § 132-1.4A(g) and other standards the Court deems relevant in determining whether to order the release of all or a portion of the recordings at issue.

12. Pursuant to N.C.G.S. § 132-1.4A(g), “[t]he court shall release only those portions of the recording that are relevant to the person’s request and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.”

The Court does hereby **ORDER, ADJUDGE, and DECREE** as follows:

1. That by stipulation, the parties agree that the herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7, which are relevant to the Petitioners’ request, should be released, as defined by N.C.G.S. § 132-1.4A(a)(7), to Petitioners and Mr. Romary as further ordered herein.

2. That upon payment by Petitioners of \$5.00 per DVD to the City of Greenville, pursuant to N.C.G.S. § 132-1.4A(l) and *The City of Greenville Manual of Fees* (available at: <https://www.greenvillenc.gov/home/showdocument?id=6918>), with a copy of the receipt emailed

or otherwise provided to Mr. Phillips, GPD shall provide to Petitioners within ten (10) business days from the satisfactory receipt of said payment receipt, the requisite number of DVDs containing the contents and portions of GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 as herein identified and ordered.

SO ORDERED, this the 25 day of October, 2019.

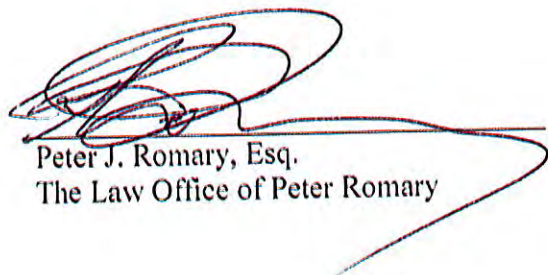


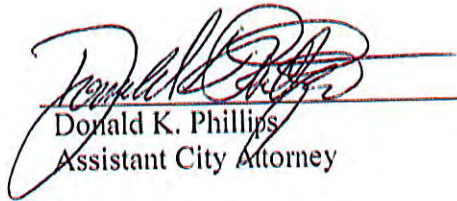
Superior Court Judge Presiding

CONSENTED TO:

For Petitioners:

For Custodial Law Enforcement Agency and
the Head of the Custodial Law Enforcement
Agency:



Peter J. Romary, Esq.
The Law Office of Peter Romary

Donald K. Phillips
Assistant City Attorney

1118159x2

Donald Phillips

From: CH1COP03 <CH1COP03@greenvillenc.gov>
Sent: Friday, October 25, 2019 10:36 AM
To: Donald Phillips
Subject: Send data from CH1COP03 10/25/2019 10:36
Attachments: DOC102519-10252019103608.pdf

Scanned from CH1COP03

Date:10/25/2019 10:36

Pages:1

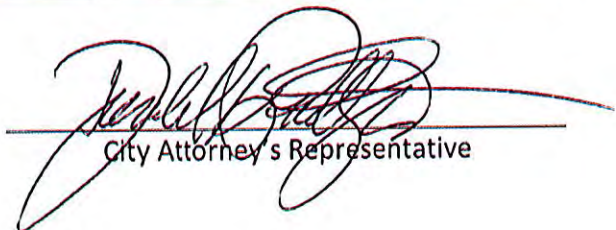
Resolution:200x200 DPI

Acknowledgment of Receipt of Items from City Attorney's Office

I, (your name) Peter Romary, by and on behalf of (complete if applicable) Petitioners, Police Benevolent Association of North Carolina, Inc. and North Carolina Fraternal Order of Police and their attorney Peter J. Romary, Esq. of the Law Office of Peter Romary, acknowledge the receipt of the following from the Greenville City Attorney's Office:

<input checked="checked" type="checkbox"/>	<p><u>In the Matter of Custodial Law Enforcement Agency Recording Sought By:</u> <u>Police Benevolent Association of North Carolina, Inc. and North Carolina Fraternal Order of Police</u> (19 CVS 3050) regarding the October 25, 2019 Order on Petition for Release of Custodial Law Enforcement Agency Recording</p> <ul style="list-style-type: none">• One (1) DVD with seven (7) GPD Recordings as per the Order.
--	--


Signature


City Attorney's Representative

10/25/19 [1036]
Date and Time

Donald Phillips

From: Donald Phillips
Sent: Friday, October 25, 2019 12:36 PM
To: Antionette Cox
Cc: Donald Phillips
Subject: FW: Petition
Attachments: DOC102519-10252019071738.pdf

Thank you.

Donald

Donald K. Phillips

Assistant City Attorney

P.O. Box 7207

Greenville, NC 27835-7207

Tel: (252) 329-4426

Fax: (252) 329-4626

Email: dkphillips@greenvillenc.gov

Website: www.greenvillenc.gov



Find yourself in good company®

-----Original Message-----

From: Antionette Cox

Sent: Friday, October 25, 2019 10:23 AM

To: Donald Phillips <DKPhillips@greenvillenc.gov>

Subject: Petition

Hello!

I was instructed to send this to you by Beardsley. The original is being given to Patina.

Thank you!

Officer A.D. Cox (480)

Field Operations Bureau

C-Platoon/West Zone

Greenville Police Department

500 S. Greene St.

Greenville NC, 27834

Cell (252)702-0455

Work (252)329-3480

Email: acox@greenvillenc.gov

STATE OF NORTH CAROLINA

File No.

19 CVS 3050

PITT County

In The General Court Of Justice
Superior Court Division

2019 OCT 25 A 9:35

IN THE MATTER OF CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING SOUGHT BY:

PITT CO., C.S.C.

Name Of Petitioner

Police Benevolent Association of North Carolina, Inc. and BY
North Carolina Fraternal Order of Police

Address

c/o Peter J. Romary, Esq.
Law Office of Peter Romary
147 Ellsworth Manor Drive

City, State, Zip

Hillsborough, NC 27278

Phone No.

(919) 359-1103

Fax No.

(919) 359-1192

Email Address

peter.romary@qverity.com

PETITION FOR RELEASE OF CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING

☐ G.S. 132-1.4A(f) – Person authorized to receive disclosure
(No Filing Fee Applies)

☒ G.S. 132-1.4A(g) – General
(CVS Filing Fee Applies)

I, the above-named petitioner, request the release of a custodial law enforcement agency recording to Peter J. Romary, Attorney. State that at least some portion of the law enforcement agency recording was made in this county, and I further state the following: Petitioners request all relevant video/recorded footage from static/pole mounted (traffic/public safety) cameras covering the area of 1) East Fifth Street and Reade Street in Greenville, NC and 2) East Fifth Street and Cotanche Street in Greenville, NC between approximately 9:00 pm on Wednesday, September 25, 2019 and 2:30 am on Thursday, September 26, 2019 showing Mr. Dan Gerlach in this area and otherwise approaching, walking up to, entering a vehicle (believed to be a gold colored Nissan), and then driving away from said location. Petitioners more specific request for release is stated in Attachment A, which is hereby made a part of this Petition.

(Please see Attachment A)

(Include date and approximate time of activity captured in the recording, or otherwise identify the activity with particularity sufficient to identify the recording at issue.)

CERTIFICATE OF SERVICE ON HEAD OF CUSTODIAL LAW ENFORCEMENT AGENCY

I certify that a filed copy of this Petition was served on the head of the custodial law enforcement agency as follows:

☒ Personal Delivery

☐ By Regular Mail, US postage prepaid, addressed as follows:

Mark R. Holtzman
Chief of Police
Greenville Police Department
500 South Greene Street
Greenville, NC 27834

Note: Also copied Assistant City Attorney Donald K. Phillips by email to: dkphillips@greenvillenc.gov

CERTIFICATE OF SERVICE ON DISTRICT ATTORNEY

I certify that a filed copy of this Petition was served on the District Attorney as follows (only required for general release):

☒ Personal Delivery

☐ By Regular Mail, US postage prepaid, addressed as follows:

The Honorable Faris C. Dixon
Pitt County District Attorney
Pitt County Courthouse
100 West 3rd Street
Greenville, NC 27858

Date

10-25-19

Petitioner's Signature

Peter J. Romary, Attorney for Petitioners

STATE OF NORTH CAROLINA
COUNTY OF PITT

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 19 CVS _____

IN THE MATTER OF CUSTODIAL)
LAW ENFORCEMENT AGENCY)
RECORDING SOUGHT BY:)
)
POLICE BENEVOLENT ASSOCIATION)
OF NORTH CAROLINA, INC. and)
NORTH CAROLINA FRATERNAL)
ORDER OF POLICE,)
)
Petitioners.)

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4. Footage showing the area of 212 East Fifth Street (East Fifth Street/Reade Street), Greenville, NC between approximately 2:00 am to 2:30 am on Thursday, September 26, 2019, particularly any footage showing Mr. Dan Gerlach, especially footage of Mr. Dan Gerlach approaching, walking up to, and entering a vehicle (believed to be a Gold colored Nissan) and then driving away from said location.

Donald Phillips

From: Donald Phillips
Sent: Friday, October 25, 2019 12:45 PM
To: Mark Holtzman; Emanuel D. McGirt; Shari S. Groccia; John Beardsley; Patina Oxendine; Mike Montanye
Cc: Rhonda Wilkerson; April Alligood; Donald Phillips
Subject: In Re PBA and FOP--Attorney Peter J. Romary
Attachments: Petition.pdf; Consent Order (10.25.19).pdf; Acknowledgment of Receipt of DVD.pdf

Re: Case Name: **In the Matter of Custodial Law Enforcement Agency Recording Sought by: Police Benevolent Association of North Carolina, Inc. and North Carolina Fraternal Order of Police**
Pitt County File No.: 19 CVS 3050
GPD Case File No.: None

All:

Please find attached for your records a copy of the filings in this matter. A DVD has been provided to Mr. Romary.

Feel free to call me if you have any questions.

Donald

Donald K. Phillips

Assistant City Attorney

P.O. Box 7207

Greenville, NC 27835-7207

Tel: (252) 329-4426

Fax: (252) 329-4626

Email: dkphillips@greenvillenc.gov

Website: www.greenvillenc.gov



Find yourself in good company®

STATE OF NORTH CAROLINA

File No.

19 CVS 3050

PITT

County

In The General Court Of Justice
Superior Court DivisionIN THE MATTER OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING SOUGHT BY:

2019 OCT 25 A 9:35

PITT CO., C.S.C.

Name Of Petitioner

Police Benevolent Association of North Carolina, Inc. and
North Carolina Fraternal Order of Police

Address

c/o Peter J. Romary, Esq.
Law Office of Peter Romary
147 Ellsworth Manor Drive

City, State, Zip

Hillsborough, NC 27278

Phone No.

(919) 359-1103

Fax No.

(919) 359-1192

Email Address

peter.romary@qverity.com

PETITION FOR RELEASE OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING☐ G.S. 132-1.4A(f) - Person authorized to receive disclosure
(No Filing Fee Applies)☒ G.S. 132-1.4A(g) - General
(CVS Filing Fee Applies)

I, the above-named petitioner, request the release of a custodial law enforcement agency recording to Peter J. Romary, Attorney. State that at least some portion of the law enforcement agency recording was made in this county, and I further state the following: Petitioners request all relevant video/recorded footage from static/pole mounted (traffic/public safety) cameras covering the area of 1) East Fifth Street and Reade Street in Greenville, NC and 2) East Fifth Street and Cotanche Street in Greenville, NC between approximately 9:00 pm on Wednesday, September 25, 2019 and 2:30 am on Thursday, September 26, 2019 showing Mr. Dan Gerlach in this area and otherwise approaching, walking up to, entering a vehicle (believed to be a gold colored Nissan), and then driving away from said location. Petitioners more specific request for release is stated in Attachment A, which is hereby made a part of this Petition.

(Please see Attachment A)

(Include date and approximate time of activity captured in the recording, or otherwise identify the activity with particularity sufficient to identify the recording at issue.)

CERTIFICATE OF SERVICE
ON HEAD OF CUSTODIAL LAW ENFORCEMENT AGENCY

I certify that a filed copy of this Petition was served on the head of the custodial law enforcement agency as follows:

☒ Personal Delivery☐ By Regular Mail, US postage prepaid, addressed as follows:Mark R. Holtzman
Chief of Police
Greenville Police Department
500 South Greene Street
Greenville, NC 27834Note: Also copied Assistant City Attorney Donald K. Phillips by email to: dkphillips@greenvillenc.gov

CERTIFICATE OF SERVICE ON DISTRICT ATTORNEY

I certify that a filed copy of this Petition was served on the District Attorney as follows (only required for general release):

☒ Personal Delivery☐ By Regular Mail, US postage prepaid, addressed as follows:The Honorable Faris C. Dixon
Pitt County District Attorney
Pitt County Courthouse
100 West 3rd Street
Greenville, NC 27858

Date

10/25/19

Petitioner's Signature

Peter J. Romary, Attorney for Petitioners

AOC-CV-270, Rev. 4/17

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STATE OF NORTH CAROLINA

COUNTY OF PITT

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 19 CVS 3050

IN THE MATTER OF CUSTODIAL)
LAW ENFORCEMENT AGENCY)
RECORDING SOUGHT BY:)

POLICE BENEVOLENT ASSOCIATION)
OF NORTH CAROLINA, INC. and)
NORTH CAROLINA FRATERNAL)
ORDER OF POLICE,)

Petitioners.)

ATTACHMENT A

As set forth in the Petition to which this Attachment is incorporated by reference, it is requested that the City of Greenville/Greenville Police Department shall release, to Petitioners, by and through their attorney, Peter J. Romary, Esq., any and all footage/recordings from static/pole mounted (traffic/public safety) cameras as set forth below:

1. Footage of the area outside of the area of Sup Dogs (East Fifth Street/Reade Street), Greenville, NC between approximately 9:00 pm to 10:50 pm on Wednesday, September 25, 2019, particularly any footage showing Mr. Dan Gerlach.

2. Footage of the area outside of the area of Club 519 (East Fifth Street/Cotanche Street), Greenville, NC between approximately 10:40 pm on Wednesday, September 25, 2019 to approximately 1:30 am on Thursday, September 26, 2019, particularly any footage showing Mr. Dan Gerlach.

3. Footage showing the area of (East Fifth Street/Cotanche Street), Greenville, NC between approximately 1:40 am to 2:00 am on Thursday, September 26, 2019, particularly any footage showing Mr. Dan Gerlach.

4. Footage showing the area of 212 East Fifth Street (East Fifth Street/Reade Street), Greenville, NC between approximately 2:00 am to 2:30 am on Thursday, September 26, 2019, particularly any footage showing Mr. Dan Gerlach, especially footage of Mr. Dan Gerlach approaching, walking up to, and entering a vehicle (believed to be a Gold colored Nissan) and then driving away from said location.

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF PITT

2019 OCT 25 A 10:03

FILE NO.: 19 CVS 3050

IN THE MATTER OF CUSTODIAL, C.S.C.,

LAW ENFORCEMENT AGENCY)

RECORDING SOUGHT BY:)

POLICE BENEVOLENT ASSOCIATION)

OF NORTH CAROLINA, INC. and)

NORTH CAROLINA FRATERNAL)

ORDER OF POLICE,)

Petitioners.)

CONSENT ORDER

ON PETITION FOR RELEASE OF
CUSTODIAL LAW ENFORCEMENT

AGENCY RECORDING

N.C.G.S. § 132-1.4A(g)

THIS MATTER came on to be heard before the undersigned Superior Court Judge upon the Petition for Release of Custodial Law Enforcement Agency Recording filed on October 25, 2019 by Petitioners, Police Benevolent Association of North Carolina, Inc. and North Carolina Fraternal Order of Police, pursuant to N.C.G.S. § 132-1.4A(g) to determine whether release of law enforcement agency recordings related to this matter is warranted under Chapter 132 of the North Carolina General Statutes.

APPEARANCES

For Petitioners:

Peter J. Romary, Esq.

The Law Office of Peter Romary

147 Ellsworth Manor Drive

Hillsborough, North Carolina 27278

Attorney for Petitioners.

Police Benevolent Association of North Carolina, Inc. and

North Carolina Fraternal Order of Police

For Custodial Law

Enforcement Agency and

the Head of the Custodial

Law Enforcement

Agency:

Donald K. Phillips

Assistant City Attorney

City of Greenville

200 West Fifth Street

Post Office Box 7207

Greenville, North Carolina 27835

Counsel for City of Greenville (Greenville Police Department)

and Designated Representative of Chief of Police Mark R.

Holtzman (Head of Custodial Law Enforcement Agency)

For Pitt County District

Attorney's Office:

None Appearing

BASED UPON the careful consideration of the arguments presented at the hearing of this matter and the entire record in this proceeding, the undersigned makes the following findings of fact.

FINDINGS OF FACT

1. The Petitioners in this matter are Police Benevolent Association of North Carolina, Inc. and North Carolina Fraternal Order of Police ("Petitioners"). On October 25, 2019, on behalf of Petitioners, Petitioners' attorney, Peter J. Romary, Esq. of The Law Office of Peter Romary ("Mr. Romary"), filed a Petition for Release of Custodial Law Enforcement Agency Recording pursuant to N.C.G.S. § 132-1.4A(g) on a form approved by the Administrative Office of the Courts (AOC-CV-270) (the "Petition").

2. The City of Greenville (the "City"), is a municipal corporation organized and existing under the laws of the State of North Carolina.

3. Pursuant to Chapter 160A of the North Carolina General Statutes, the City has established, organized, and maintained an accredited law enforcement agency, the Greenville Police Department ("GPD"), with territorial jurisdiction and all law enforcement powers as authorized by statute, case law, and the common law of the State of North Carolina within the corporate limits of the City.

4. Petitioners seek footage from certain traffic/public safety cameras which are unrelated to any pending GPD criminal investigation.

5. The City and GPD consider Petitioners' Petition to be a request for traffic/public safety cameras recordings, as defined by N.C.G.S. § 132-1.4A(a)(6), which are not public record pursuant to N.C.G.S. § 132-1.4(c) and N.C.G.S. § 132-1.4A(b), and of which GPD owns or leases or whose personnel operates the equipment that created the recordings at the time the recordings were made.

6. GPD is the custodial law enforcement agency at issue in this matter as defined by N.C.G.S. § 132-1.4A(a)(2).

7. On or about October 25, 2019, in accordance with N.C.G.S. § 132-1.4A(g), Petitioners served a copy of the Petition upon Mark R. Holtzman, GPD Chief of Police, the head of the custodial law enforcement agency ("Chief Holtzman"), and upon the Honorable Faris C. Dixon, District Attorney for Prosecutorial District 3A, Pitt County ("District Attorney Dixon").

8. On or about October 25, 2019, the Petitioners also served a courtesy copy of same to Donald K. Phillips, Assistant City Attorney and the attorney for the City and GPD ("Mr. Phillips").

9. In accordance with N.C.G.S. § 132-1.4A(g), Chief Holtzman ("the head of the custodial law enforcement agency") was notified of the Petition and has been given an opportunity

to be heard, by and through his designated representative, Mr. Phillips (“and those persons, or their designated representative,” have been “given an opportunity to be heard”).

10. In accordance with N.C.G.S. § 132-1.4A(g), the City is unaware of any law enforcement agency personnel whose image or voice are in any of the recordings at issue. Accordingly, there are no law enforcement agency personnel subject to being notified and given an opportunity to be heard in this matter.

11. Each person entitled to be notified of this proceeding, was given an opportunity to be heard, either individually or by such person’s designated representative.

12. GPD has custody of the following seven (7) recordings, as defined by N.C.G.S. § 132-1.4A(a)(6), involving and/or related to Petitioners’ request and that are the subject of the Petition at issue:

GPD Recording				
No.	GPD File Name	Date	Type	Time
1.	TFC_GPD_5thReade_PTZ_R2 UPT_GPD_5thReade_Quad1_NE_R6a UPT_GPD_5thReade_Quad1_W_R6a	09/25/2019	Traffic/Public Safety Camera	9:20 pm-10:45 pm 9:20 pm-9:30 pm 9:20 pm-9:30 pm
2.	UPT_GPD_5thCotanche_Quad5_N_R6a UPT_GPD_5thCotanche_Quad5_E_R6a UPT_GPD_5thCotanche_Quad5_W_R6a	09/25/2019	Traffic/Public Safety Camera	10:41 pm-10:43 pm 10:41 pm-10:43 pm 10:41 pm-10:43 pm
3.	UPT_GPD_5thCotanche_Quad1_SE_R6a UPT_GPD_5thCotanche_Quad4_N_R6a UPT_GPD_5thCotanche_Quad4_S_R6a	09/25/2019	Traffic/Public Safety Camera	10:42 pm-10:46 pm 10:42 pm-10:46 pm 10:42 pm-10:46 pm
4.	UPT_GPD_5thCotanche_Quad4_SW_R6a UPT_GPD_5thCotanche_Quad4_W_R6a UPT_GPD_5thCotanche_Quad4_N_R6a UPT_GPD_5thCotanche_Quad4_S_R6a	09/26/2019	Traffic/Public Safety Camera	1:15 am-1:21am 1:15 am-1:21am 1:15 am-1:21am 1:15 am-1:21am
5.	UPT_GPD_5thCotanche_Quad1_S_R6a UPT_GPD_5thCotanche_Quad1_SE_R6a	09/26/2019	Traffic/Public Safety Camera	1:15 am-1:21am 1:15 am-1:21am
6.	UPT_GPD_5thCotanche_S_R2	09/26/2019	Traffic/Public Safety Camera	1:16am-1:17 and 1:47 am-1:56 am
7.	TFC_GPD_5thReade_PTZ_R2 TFC_GPD_5thReade_W_R2 UPT_GPD_5thReade_Quad1_NE_R6a UPT_GPD_5thReade_Quad1_W_R6a	09/26/2019	Traffic/Public Safety Camera	2:10 am-2:13 am

13. Herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 are City traffic/public safety camera "recordings," as defined by N.C.G.S. § 132-1.4A(a)(6)("[a] visual, audio, or visual and audio recording captured by . . . any other video or audio recording device . . ."). The parties agree and stipulate to the release of GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 in its entirety to Petitioners and Mr. Romary. The parties further agree and stipulate that GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 in their entireties as herein defined are relevant to Petitioners' and Mr. Romary's request and are subject to release to Petitioners as defined by N.C.G.S. § 132-1.4A(a)(7) as further ordered herein.

14. All recordings at issue in this matter were made entirely in Pitt County, North Carolina.

15. The Court did not conduct an in-camera review of any recordings at issue in this case.

BASED UPON the foregoing findings of fact, the undersigned makes the following conclusions of law.

CONCLUSIONS OF LAW

1. The filing of this Petition is made in accordance with N.C.G.S. § 132-1.4A(g).
2. Each person entitled to be notified of the proceeding was given an opportunity to be heard, either individually or by such person's designated representative.
3. To the extent that same exists, Petitioners have stated the date and approximate time of the activity captured in the recordings sought or have otherwise identified the activity with reasonable particularity sufficient to identify the recordings.
4. The Court has jurisdiction over the parties and the subject matter herein.
5. The Court has carefully reviewed N.C.G.S. § 132-1.4A in its entirety.
6. A "recording" is defined in N.C.G.S. § 132-1.4A(a)(6) as:

[a] visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses.
7. "Release," as defined by N.C.G.S. § 132-1.4A(a)(7), means "[t]o provide a copy of a recording."

8. All of the recordings at issue (GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7) are records of criminal investigations and/or records of criminal intelligence information pursuant to N.C.G.S. § 132-1.4. Additionally, all recordings at issue are not public records pursuant to N.C.G.S. § 132-1.4(a) and N.C.G.S. § 132-1.4A(b). Accordingly, the recordings at issue contain information that is otherwise exempt from disclosure or release under North Carolina law.

9. Pursuant to N.C.G.S. § 132-1.4A(g), Petitioners and Mr. Romary seek release of all of the herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7.

10. N.C.G.S. § 132-1.4A(g) states in pertinent part:

In determining whether to order the release of all or a portion of the recording, in addition to any other standards the court deems relevant, the court shall consider the applicability of all of the following standards:

- (1) Release is necessary to advance a compelling public interest.
- (2) The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- (4) Release would reveal information regarding a person that is of a highly sensitive personal nature.
- (5) Release may harm the reputation or jeopardize the safety of a person.
- (6) Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- (7) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- (8) There is good cause shown to release all portions of a recording.

11. The Court has considered the standards set out in N.C.G.S. § 132-1.4A(g) and other standards the Court deems relevant in determining whether to order the release of all or a portion of the recordings at issue.

12. Pursuant to N.C.G.S. § 132-1.4A(g), “[t]he court shall release only those portions of the recording that are relevant to the person’s request and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.”

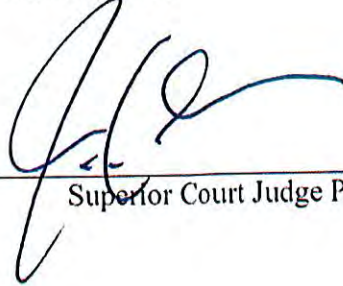
The Court does hereby **ORDER, ADJUDGE, and DECREE** as follows:

1. That by stipulation, the parties agree that the herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7, which are relevant to the Petitioners’ request, should be released, as defined by N.C.G.S. § 132-1.4A(a)(7), to Petitioners and Mr. Romary as further ordered herein.

2. That upon payment by Petitioners of \$5.00 per DVD to the City of Greenville, pursuant to N.C.G.S. § 132-1.4A(l) and *The City of Greenville Manual of Fees* (available at: <https://www.greenvillenc.gov/home/showdocument?id=6918>), with a copy of the receipt emailed

or otherwise provided to Mr. Phillips, GPD shall provide to Petitioners within ten (10) business days from the satisfactory receipt of said payment receipt, the requisite number of DVDs containing the contents and portions of GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 as herein identified and ordered.

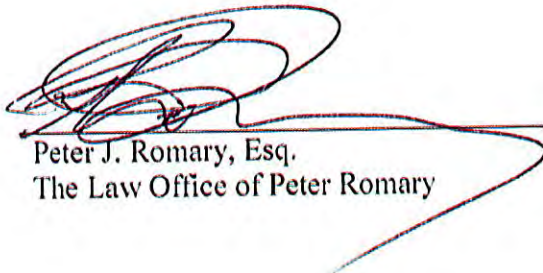
SO ORDERED, this the 25 day of October, 2019.



Superior Court Judge Presiding

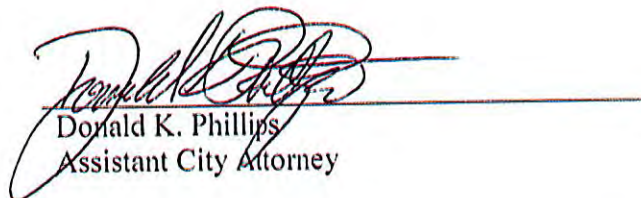
CONSENTED TO:

For Petitioners:



Peter J. Romary, Esq.
The Law Office of Peter Romary

For Custodial Law Enforcement Agency and
the Head of the Custodial Law Enforcement
Agency:



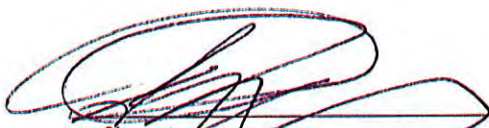
Donald K. Phillips
Assistant City Attorney

1118159v2

Acknowledgment of Receipt of Items from City Attorney's Office

I, (your name) Peter Romary, by and on behalf of (complete if applicable) Petitioners, Police Benevolent Association of North Carolina, Inc. and North Carolina Fraternal Order of Police and their attorney Peter J. Romary, Esq. of the Law Office of Peter Romary, acknowledge the receipt of the following from the Greenville City Attorney's Office:

<input checked="checked" type="checkbox"/>	<p><i>In the Matter of Custodial Law Enforcement Agency Recording Sought By: Police Benevolent Association of North Carolina, Inc. and North Carolina Fraternal Order of Police (19 CVS 3050) regarding the October 25, 2019 Order on Petition for Release of Custodial Law Enforcement Agency Recording</i></p> <ul style="list-style-type: none">• One (1) DVD with seven (7) GPD Recordings as per the Order.
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Signature


City Attorney's Representative

10/25/19 [1036]
Date and Time